Supreme Court, U.S.
FILED
AUG 18 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-64

In the Supreme Court of the United States

OCTOBER TERM, 1988

CHARLES WOODS TELEVISION CORP.,
Petitioner,

vs.

CAPITAL CITIES/ABC, INC.,
Respondent.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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Sanders Plumbing and Heating v. City of Independence, 694 S.W.2d 830 (Mo.App. 1985) 1

Constitutional Provision

United States Constitution, Amendment VII 1, 3

ARGUMENT

For its reply to Respondent's Brief, Petitioner states:

ABC suggests Woods failed to sufficiently raise the Seventh Amendment issue (ABC brief p. 5). Woods did raise the issue in its post trial briefs before the District Court and specifically in its Motion for Rehearing before the Eighth Circuit.

The issue was raised in Woods' post trial briefs in the district court. See brief of Plaintiff in Opposition to Defendant's Motion for Judgment Notwithstanding the Verdict, and in the Alternative, a New Trial, Docket Number 271 filed in the district court June 2, 1988 (pp. 21-22); Additional Suggestions of Plaintiff in Opposition to Defendant's Motion for Judgment N.O.V. and in the Alternative for a New Trial Docket Number 273 filed in the district court June 10, 1988 (p. 3). The Seventh Amendment issue was raised in the brief of June 2, 1988 by the following,

> The jury system is an important part of our system of justice. Although we may not always personally agree with a verdict, juries render a very important service to our system of government. . . .
>
> Where reasonable minds can differ on a question before the jury, the court may not disturb the verdict. *See Sanders Plumbing and Heating v. City of Independence*, 694 S.W.2d 830 (Mo.App. 1985) (pp. 21-22).

And the issue was raised explicitly in the June 22, 1988 suggestions where Woods repeated the observation from *Sanders Plumbing* and thereafter explained,

> Such has not always been the law. In 1670, William Penn (later the founder of the Colony of Pennsyl-

> vania) was charged by the Crown with unlawful assembly. After receiving instructions, the jury retired to deliberate and subsequently returned to the Court on four occasions with a verdict other than with what the Court thought it should be. Each time the jury was told that its verdict was unacceptable and was ordered to return for additional deliberations until a "proper" verdict could be reached. Finally, the jury refused to decide the case as required by the Court. William Penn was imprisoned anyway but he was joined by good company. The twelve jurors were also imprisoned by the Court. The Seventh Amendment to the United States Constitution did not arise in a vacuum. Both parties in the instant case were entitled to a *fair* jury trial, and that is precisely what occurred.

The District Court in its Order granting the Judgment N.O.V. specifically addressed the issue by saying "Plaintiff makes an eloquent statement in favor of jury verdicts." (Woods' Petition App. 11).

Finally, in the Motion for Rehearing or Rehearing En Banc; filed in the Eighth Circuit, March 28, 1989, Woods raised the issue by stating,

> Appellant respectfully states that, in the particulars set forth in the foregoing Motion for Rehearing, the Court by relying upon (a) supposed facts not in evidence, (b) the evidence least favorable to Appellant, and (c) sheer speculation to affirm the judgment entered against Appellant notwithstanding a jury verdict in Appellant's favor is effectively denying Appellant its right under Amend. VII, Constitution of the United States, to trial by jury, thereby presenting for the Court in Banc a question of exceptional importance.

The Eighth Circuit did not disregard Defendant's evidence unfavorable to Plaintiff. The Eighth Circuit not only considered Defendant's evidence that Woods contracted for a price reduction if the affiliation was lost and told his banker the station would perform just as well if the affiliation was lost, the Court actually relied upon that evidence in upholding the district court's grant of judgment N.O.V. (8th Cir. Op. p. 8). The Court also relied on that evidence to negate Woods' proof of damage (8th Cir. Op. p. 12). The Eighth Circuit also concluded the negotiated addendum [price reduction] prevented "it from suffering any injury at all," (8th Cir. Op. p. 12) again not only considering but actually relying on Defendant's facts and ignoring Woods' contrary evidence.

CONCLUSION

The suggestion that Petitioner's present complaint is an afterthought, half-heartedly asserted, is contrary to fact as evidenced by the record. The Eighth Circuit, in the manner and particulars already described by Petitioner, denied Petitioner its Seventh Amendment right to trial by jury and the writ should issue.

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CERTIFICATE OF SERVICE

The pleading was served upon all attorneys of record for each of the parties to this action and all parties not represented by counsel, by mailing a copy to him, as prescribed by law.

On this 18th day of August, 1989.

GARY R. CUNNINGHAM